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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL BRANDON BUSH,

Defendant and Appellant.

B257843

(Los Angeles County  
Super. Ct. No. MA060096-01)

APPEAL from judgment of the Superior Court of Los Angeles County,  
Charles A. Chung, Judge. Affirmed.

John Doyle, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and  
Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

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## ***INTRODUCTION***

A jury convicted defendant Joel Bush of kidnapping to commit robbery, second degree robbery, assault with a firearm, and possession of a firearm by a felon. The jury also found true allegations that Bush personally used a firearm and stole, damaged, or destroyed property worth more than \$65,000. After Bush waived his right to a jury trial on his prior convictions, the trial court found them to be true. The court sentenced Bush to 30 years to life in state prison (with parole eligibility after 14 years) for his kidnapping to commit robbery conviction. Bush's sole contention on appeal is that there is insufficient evidence to support his conviction for kidnapping to commit robbery. We affirm.

## ***FACTS***

Around 9:00 a.m. on December 7, 2012, Alejandro Begue was working alone at his jewelry store in Lancaster when a man wearing a black and yellow plaid shirt approached the front entrance. After Begue remotely opened the store's security doors, the man approached the front display case and asked Begue if he was interested in purchasing several steel-band watches. Begue told the man he was not interested in buying the watches.

Several minutes later, Bush approached the front entrance. Begue remotely opened the store's security door, and Bush walked slowly toward the front display case, looking around the store as if he were interested in purchasing jewelry and acting as if he did not know the man in the plaid shirt. When he reached the front display case, Bush drew a silver semi-automatic handgun from his pants, pointed it at Begue's head, and said, "Merry Christmas, mother fucker." The man in the plaid shirt then drew a black semi-automatic pistol and pointed it at Begue. Both men went behind the front case, grabbed Begue from behind, and made him walk approximately 30 to 40 feet to the store's back room.<sup>1</sup>

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<sup>1</sup> The store is divided into three rooms aligned in a row when viewed from above: a front room where the display cases are located; a middle room where Begue performs

In the back room, Bush and the man in the plaid shirt made Begue lay face down on the floor. They bound Begue's mouth and feet with duct tape and tied metal wire around his body. The man in the plaid shirt then went back to the front room to gather jewelry.

While the man in the plaid shirt gathered jewelry from the display cases in the front room, Bush watched over Begue in the back room. Bush kept his gun pointed at Begue's head the entire time and at one point said, "Keep your mouth shut, or I'm going to shoot you." Bush threatened to shoot Begue three to four times throughout the robbery.

After the man in the plaid shirt removed the jewelry from the front room, he and Bush dragged Begue to the middle room where the computer recording the surveillance video footage was kept. They told Begue to remove the video footage from the computer. Begue responded that he did not know how to remove the footage because it was stored on the computer's hard drive. Bush and the man in the plaid shirt then dragged Begue to the back room again.

Shortly after he was dragged to the back room the second time, Begue could hear Bush and the other man trying to leave the store through the door in the back room. Begue did not look at the men as they tried to open the door because Bush was still pointing the gun at him. Bush and the other man eventually left the store through the front door.

According to Begue, the entire robbery lasted approximately 15 minutes. Begue testified that Bush and the man in the plaid shirt stole about \$105,000 worth of jewelry,

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repairs and casts metal; and a back room where Begue also does casting work, melts gold, and eats lunch. In total, the store spans about 100 feet from the front entrance to the rear wall of the back room. The front security door is made of clear glass and there are windows on the front of the store. However, according to Begue, it is very difficult to see into the front room, and it is not possible to see into the back room, through the front windows. The store is outfitted with surveillance video cameras, which record video feeds onto a computer stored in the middle room.

in wholesale value, from his store.<sup>2</sup> Bush and the other man did not take or destroy the surveillance video footage. Bush was later identified through the surveillance footage and Begue's statements to the police, but the man in the plaid shirt was never identified.

### ***DISCUSSION***

#### ***1. Sufficient Evidence Supports Bush's Conviction for Kidnapping to Commit Robbery***

On appeal, Bush argues that insufficient evidence supports his conviction for kidnapping to commit robbery (Pen. Code, § 209, subd. (b)(1)). Specifically, he contends his movement of Begue throughout the jewelry store during the robbery was merely incidental to the crime and did not increase the risk of harm to Begue. We disagree.

##### ***A. Relevant Principles of Kidnapping to Commit Robbery***

Under section 209, subdivision (b)(1), "Any person who kidnaps or carries away any individual to commit robbery . . . shall be punished by imprisonment in the state prison for life with the possibility of parole." To qualify as kidnapping to commit robbery, or aggravated kidnapping, the movement of the victim must be beyond that merely incidental to the commission of the robbery, and it must increase the risk of harm to the victim over and above that necessarily present in the commission of a robbery. (Pen. Code, § 209, subd. (b)(2).) Although the determination of whether the defendant's forced movement of the victim constitutes aggravated kidnapping involves a two-pronged analysis, both prongs " 'are not mutually exclusive, but interrelated.' " (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1152 (*Dominguez*).) "[E]ach case must be considered in the context of the totality of its circumstances." (*Ibid.*)

To determine whether the movement is more than incidental to the robbery, courts look to "the 'scope and nature' of the movement." (*People v. Rayford* (1994)

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<sup>2</sup> The jury ultimately found Bush stole at least \$65,000 worth of property from Begue's store.

9 Cal.4th 1, 12.) While courts should consider the actual distance the defendant moves the victim, “no minimum distance is required to satisfy the asportation requirement [citation], so long as the movement is substantial [citation].” (*Dominguez, supra*, 39 Cal.4th at p. 1152.) The actual distance of movement “must be considered in context, including the nature of the crime and its environment.” (*Ibid.*) Although movement of a victim inside the building where he is found “generally” will not constitute aggravated kidnapping (see *People v. Daniels* (1969) 71 Cal.2d 1119, 1140), “there may be circumstances in which a robber can properly be convicted of kidnapping even though he does not take his victim outside the premises in question.” (*People v. Timmons* (1971) 4 Cal.3d 411, 415.)

“The essence of aggravated kidnapping is the increase in the risk of harm to the victim caused by the forced movement.” (*Dominguez, supra*, 39 Cal.4th at p. 1152.) Courts may look to several factors to determine whether the forced movement increased the risk of harm to the victim, including “whether the movement decreases the likelihood of detection, increases the danger inherent in a victim’s foreseeable attempts to escape, or enhances the attacker’s opportunity to commit additional crimes.” (*Ibid.*) “ ‘The fact that these dangers do not in fact materialize does not, of course, mean that the risk of harm was not increased. [Citations.]’ ” (*People v. Martinez* (1999) 20 Cal.4th 225, 233.)

#### B. *Standard of Review*

When reviewing the sufficiency of the evidence to support a conviction, “ ‘we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) We neither reweigh evidence nor reevaluate the credibility of witnesses. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27; see also *People v. Richardson* (2008) 43 Cal.4th 959, 1030 [under the substantial evidence test, “we defer to the trier of fact’s evaluation of credibility”].)

“ ‘ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ [Citations.]” (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Therefore, before we may set aside the judgment, it must be clear that “ ‘ “upon no hypothesis whatever is there sufficient evidence to support it.” ’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

### C. Analysis

We find that substantial evidence supports Bush’s conviction for aggravated kidnapping. As we explain, Bush’s forced movement of Begue throughout the jewelry store was more than incidental to the robbery and increased the risk of harm to Begue.

First, Bush’s movement of Begue at gunpoint between the back and middle rooms was not the “brief or slight movement naturally occurring in a robbery.” (See *People v. Leavel* (2012) 203 Cal.App.4th 823, 836 (*Leavel*).) Begue testified that once Bush’s accomplice finished removing the jewelry from the front display cases, he and Bush dragged Begue at gunpoint to the middle room to remove the surveillance video footage. Once Bush and his accomplice attempted unsuccessfully to remove the footage, they dragged Begue to the back room again, and Bush continued to hold Begue at gunpoint while he and the other man tried to leave through the back door. This movement was excessive and gratuitous because, by the time Bush dragged Begue to the middle room, the purpose of the robbery (securing the jewelry) had been achieved. Instead of continuing to move Begue at gunpoint, Bush and his accomplice could have simply left the store through the front entrance to complete the robbery. (See *People v. Corcoran* (2006) 143 Cal.App.4th 272, 279-280 (*Corcoran*) [forced movement of the victim *after* the robbery had been aborted was clearly excessive and gratuitous and not merely incidental to the attempted robbery].)

Second, Bush’s forced movement also substantially increased the risk of harm to Begue. Indeed, Bush held Begue at gunpoint in the back room the entire time his accomplice removed jewelry from the front of the store, and he continued to move Begue between the middle and back rooms while carrying a loaded gun. When Bush

and his accomplice dragged Begue to the middle room, Begue's feet were bound and his body was wrapped in wire. By carrying a loaded gun while forcing Begue to move, Bush substantially increased the risk that he would accidentally or intentionally shoot Begue. (See *Leavel*, *supra*, 203 Cal.App.4th at p. 836 [defendant's movement of the victim substantially increased the risk of harm because most of the movements occurred while he was carrying a loaded gun].) In addition, by moving Begue between the back and middle rooms, Bush kept Begue removed from public view in the front room, which was fronted by windows to the street. (See *Dominguez*, *supra*, 39 Cal.4th at p. 1152.)

This case is distinguishable from *People v. Washington* (2005) 127 Cal.App.4th 290 (*Washington*) and *People v. Hoard* (2002) 103 Cal.App.4th 599 (*Hoard*), two cases upon which Bush relies in arguing his conviction for aggravated kidnapping is not supported by substantial evidence. In *Washington*, two defendants were convicted of aggravated kidnapping after they robbed a bank during business hours. (*Washington*, *supra*, 127 Cal.App.4th at pp. 295-296.) During the robbery, one of the defendants made two bank employees walk at gun point to the bank's vault. (*Id.* at p. 296.) He moved one employee approximately nine feet from the manager's office to the vault, and he moved the other employee approximately 15 feet from the teller area to the vault. (*Ibid.*) Once the vault was open, he made the employees lay face down on the floor. (*Ibid.*) After clearing the vault, the defendants immediately walked out of the bank's back door. (*Ibid.*) In reversing the convictions for kidnapping to commit robbery, the court reasoned that such movement was insufficient to support an aggravated kidnapping conviction because a "robbery of a business owner or employee includes the risk of movement of the victim to the location of the valuables . . . held on the business premises." (*Id.* at p. 300.)

Unlike in *Washington*, Bush's forced movement of Begue was not necessary to commit the robbery. Bush did not need to move Begue to access the jewelry because all of the jewelry that was stolen was kept in the display cases in the front room, where Bush first encountered Begue. Additionally, unlike the defendants in *Washington*, Bush moved Begue at gunpoint *after* all of the valuables were found. This movement was

excessive and gratuitous because the purpose of the robbery had been fulfilled once the jewelry in the front room was secured. In other words, Bush's movement of Begue from the back room to the middle room where the surveillance footage was stored had nothing to do with taking jewelry from the store; Bush and his accomplice could have left the store once they secured the jewelry. (See *Corcoran, supra*, 143 Cal.App.4th at pp. 279-280.)

In *Hoard*, the defendant was convicted of aggravated kidnapping after he robbed a jewelry store. (*Hoard, supra*, 103 Cal.App.4th at p. 602.) After he entered the store, the defendant displayed a gun and made the two employees on duty walk about 50 feet to the store's backroom, where he bound their wrists, ankles, and mouths with duct tape. (*Id.* at pp. 602, 607.) He left the employees in the back room and returned to the front room to gather jewelry from the display cases. (*Id.* at p. 602.) After gathering the jewelry, the defendant returned to the back room and threatened the employees, but he did not move them. (*Ibid.*) He then left the store. (*Ibid.*) The Court of Appeal reversed the defendant's conviction for aggravated kidnapping, concluding that his movement of the employees was merely incidental to the robbery because it "served only to facilitate the crime with no other apparent purpose." (*Hoard, supra*, 103 Cal.App.4th at p. 607, fn. omitted.) The court reasoned that the defendant's forced movement of the employees provided him free access to the jewelry and helped conceal the robbery from members of the public. (*Ibid.*) The court further found that the employees "may have been at less risk tied up in the back office where they could not try to thwart the robbery than had they remained at gunpoint in the front of the store." (*Ibid.*)

There are critical distinctions between this case and *Hoard*. Unlike in *Hoard*, Bush continued to move Begue at gunpoint after the jewelry was secured. Accordingly, Bush's movement of Begue did not serve only to facilitate his and his accomplice's taking of the jewelry. In addition, unlike the defendant in *Hoard*, Bush held Begue at gunpoint the entire time his accomplice gathered jewelry, and he continued to hold Begue at gunpoint while he and his accomplice moved Begue between the middle and back rooms after the jewelry was secured. This conduct clearly increased the risk of

harm to Begue. Indeed, in concluding that the defendant's movement did not increase the risk of harm to the employees, the court in *Hoard* acknowledged that the defendant did not hold the employees at gunpoint throughout the robbery. (*Hoard, supra*, 103 Cal.App.4th at p. 607.)

After considering the totality of the circumstances surrounding the robbery and Bush's movement of Begue, we conclude substantial evidence supports Bush's conviction for aggravated kidnapping.

***DISPOSITION***

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

JONES, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.